

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

GERALD J. EVANS, Personal Representative of  
the Estate of MARGARET J. EVANS,

Plaintiff-Appellee,

v

LOUIS HALLAL, M.D.,

Defendant-Appellant,

and

STEPHEN D. CHABALA, D.O., ANDREA  
DEMICK, M.D., TRINITY HEALTH  
MICHIGAN, ST MARY MERCY HOSPITAL,  
MARC S. MASTROPAOLO, D.O., and NEW  
HORIZON MEDICAL CENTER, P.C.,

Defendants.

---

Before: Sawyer, P.J., and Wilder and H. Hood\*, JJ.

PER CURIAM.

This case has been remanded by the Supreme Court for consideration as on leave granted. Defendant Louis Hallal, M.D., appeals from the trial court's order denying his motion for summary disposition in this medical malpractice case. We reverse and remand for entry of summary disposition in favor of Hallal.

Decedent died on July 8, 2001, after receiving emergency treatment from Hallal and the other defendants. Plaintiff was appointed personal representative of decedent's estate, and letters

---

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

of authority were issued to plaintiff on January 17, 2002.<sup>1</sup> On January 7, 2004, plaintiff filed a notice of intent (NOI) to file a medical malpractice action, as required by MCL 600.2912d. At the time relevant to this case, the filing of a NOI tolls the statute of limitations for 182 days. MCL 600.5856(d).<sup>2</sup> Plaintiff filed suit alleging medical malpractice on July 15, 2004.

Hallal moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's complaint was barred by the statute of limitations because it was filed more than two years after the date of the alleged malpractice, and no savings provision applied. The other defendants concurred in Hallal's motion. Hallal relied on *Waltz v Wyse*, 469 Mich 642, 650; 677 NW2d 813 (2004), in which the Supreme Court held that the tolling period provided in MCL 600.5856(d) did not apply to the savings provision in MCL 600.5852. The trial court denied summary disposition as to all defendants, concluding that *Waltz, supra*, did not apply retroactively to bar plaintiff's action.

Hallal sought leave to appeal to this Court (Docket No. 259580). Defendants Stephen D. Chabala, M.D., Trinity Health Michigan, and St. Mary Mercy Hospital filed a separate application for leave to appeal the trial court's order (Docket No. 259639). In separate orders, we denied the applications.

Hallal, only, sought leave to appeal to the Supreme Court. The Supreme Court, in lieu of granting leave to appeal, remanded the matter to this Court "for consideration, as on leave granted, of the question whether the statute of limitations bars an action from proceeding where the complaint was filed more than two years *after* the original letters of authority and *before* the subsequent letters of authority were issued."<sup>3</sup> The Supreme Court directed that *Waltz, supra*, be given "full retroactive application."<sup>4</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

---

<sup>1</sup> The limitations period for a medical malpractice action is two years. MCL 600.5805(6). MCL 600.5852, a savings provision applicable to wrongful death actions, provides that if a person dies prior to the expiration of the limitations period, as happened in this case, the personal representative may commence an action within two years after letters of authority are issued. An action cannot be maintained unless it is filed within three years after the limitations period has expired.

<sup>2</sup> 2004 PA 87, effective April 1, 2004, rewrote MCL 600.5856. The amended version of the statute does not apply in this case.

<sup>3</sup> A successor personal representative was appointed in this case, and letters of authority were issued to the successor personal representative on October 14, 2004. Nothing in the lower court file indicates that the successor personal representative has filed a complaint in the trial court.

<sup>4</sup> Thereafter, defendants Chabala, Trinity, and St. Mary filed a delayed application for leave to appeal the trial court's order denying summary disposition (Docket No. 263840), as did defendant Marc S. Mastropaolo, D.O. (Docket No. 264298). We held these delayed applications in abeyance pending our decision in the instant case.

We reverse the trial court's decision denying Hallal's motion for summary disposition, and remand with instructions to enter summary disposition on behalf of Hallal. *Waltz, supra*, must be applied retroactively, in accordance with the Supreme Court's directive. See also *Ousley v McLaren*, 264 Mich App 486, 490-493; 691 NW2d 817 (2004); *Farley v Cardiovascular Health Specialists, PC*, 266 Mich App 566; 703 NW2d 115 (2005). Plaintiff's act of filing an NOI on January 7, 2004, did not toll the two-year grace period provided for in MCL 600.5852. *Waltz, supra* at 650.

Decedent died on July 8, 2001; thus, the cause of action accrued on that date. See *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 222; 561 NW2d 843 (1997). Plaintiff's letters of authority were issued on January 17, 2002. Plaintiff did not file suit on or before either July 8, 2003, the date the two-year statute of limitations applicable to medical malpractice actions expired, or January 17, 2004, the date the two-year savings provision expired. In light of *Waltz, supra*, *Ousley, supra*, and *Farley, supra*, plaintiff's suit was not filed in a timely manner, notwithstanding the fact that it was filed within three years after the expiration of the two-year statute of limitations applicable to medical malpractice actions. See *Farley, supra* at 574-575. Hallal was entitled to summary disposition.

Reversed and remanded for entry of summary disposition in favor of Hallal. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Kurtis T. Wilder

/s/ Harold Hood